

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARYLYNNE E. BONTA,

Plaintiff,

v.

ACCOR NORTH AMERICA, INC. ET AL.,

Defendants.

ACCOR NORTH AMERICA, INC. ET AL.,

ORDER
07-CV-735S

Third-Party Plaintiffs,

v.

ABAT BUILDERS AND FEINKOPF SCHAPPA
ARCHITECTS,

Third-Party Defendants.

1. On September 11, 2007, Plaintiff Marylynne E. Bonta commenced this action in the Supreme Court for the State of New York, Erie County for injuries Plaintiff allegedly sustained on August 19, 2006 while staying at a Red Roof Inn located in Hamburg, New York. Plaintiff named Accor North America, Inc., Red Roof Inns, Inc., and Red Roof Buffalo I Co. as defendants. The case was removed to this Court on October 31, 2007. (Docket No. 1.)

2. Following removal, Defendants Accor North America, Inc. and Red Roof Inns, Inc. filed a third party Complaint against Abat Builders ("Abat") and Feinkopf Schappa Architects ("Feinkopf") (together "Third-Party Defendants"). (Docket Nos. 48 and 49.)

3. On May 29, 2009, Third-Party Defendant Abat moved to dismiss the third party Complaint. (Docket No. 56.¹) Thereafter, this Court referred Third-Party Defendant's Motion to the Honorable Hugh B. Scott, United States Magistrate Judge, for the issuance of a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). (Docket No. 64.)

4. On July 28, 2009, Judge Scott filed a Report and Recommendation recommending that Third-Party Defendant Abat's Motion be denied. (Docket No. 83.) No objections to the Report and Recommendation were received from either party within ten (10) days from the date of its service, in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).

5. This Court has carefully reviewed Judge Scott's Report and Recommendation as well as the pleadings and materials submitted by the parties and will accept Judge Scott's recommendation in its entirety.

IT HEREBY IS ORDERED, that this Court accepts Judge Scott's Report and Recommendation (Docket No. 83) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Third-Party Defendant Abat's Motion to Dismiss (Docket No. 56) is DENIED.

¹ In support, Third-Party Defendants filed a Memorandum of Law, an Affirmation, and two Exhibits (Docket No. 54), and an additional Affirmation in Reply, along with two Exhibits (Docket No. 82). Third-Party Plaintiffs submitted an Affirmation in Response to Third-Party Defendants' Motion. (Docket No. 74.)

FURTHER, that Third-Party Defendant Abat's Motion for Attorney Fees (Docket No. 82 is DENIED.

SO ORDERED.

Dated: September 6, 2009
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge